

TITLE 12. CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

[Notice published October 26, 2018]

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Veterans Affairs ("CalVet") is proposing to take the action described in the Informative Digest after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

CalVet will hold a public hearing starting at 10:00 a.m. on December 14, 2018, at the Medal of Honor Hall ("MOH"), on the first floor of CalVet's Headquarters Building located at 1227 O Street, Sacramento, California 95814. The MOH is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. CalVet requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalVet. Comments may also be submitted by facsimile (FAX) at (916) 653-2456 or by e-mail to phil.mcallister@calvet.ca.gov. The written comment period closes at **5:00 p.m. on December 10, 2018**. CalVet will consider only comments received at CalVet offices by that time, as well as comments received at the public hearing. Submit comments to:

Phil McAllister, Regulatory Actions Coordinator
California Department of Veterans Affairs
1227 O Street, Suite 300
Sacramento, California 95814

AUTHORITY AND REFERENCE

Authority: Education Code Sections 67100, 67101, and 67102. Reference: 38 C.F.R. 21.4253 and 3671.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

A. Policy Statement Overview

The California Department of Veterans Affairs (CalVet), California State Approving Agency for Veterans Education (CSAAVE), operates under contract with the U.S. Department of Veterans Affairs (USDVA). Under the authority of federal law, Title 38 United States Code, the CSAAVE approves or disapproves veterans' education and training programs, prevents abuses,

and promotes quality in veterans' education by evaluating and monitoring education and training programs.

CalVet proposes to adopt California Code of Regulations, title 12, sections 443, 444, 445, 446, and 447 concerning additional requirements on postsecondary educational institutions seeking to enroll veterans or persons eligible for Title 38 funds.

Education Code Sections 67100, 67101, and 67102 grants CSAAVE administrative control over the Title 38 Funding Program. Postsecondary educational institutions and programs seeking to enroll veterans or persons eligible for Title 38 awards must receive CSAAVE approval for these courses. To that end, CSAAVE may require the postsecondary institution or program to comply with all federal and state laws and regulations as well as additional reasonable criteria established by CSAAVE. Beginning in the 2016-2017 award year, the postsecondary institution or program must also have its approval to operate from the Bureau for Private Postsecondary Education (BPPE) certified by CSAAVE or be a California public college or university.

Currently, CSAAVE has not adopted comprehensive criteria for Title 38 funding. Without regulations, postsecondary educational institutions and programs will continue to spend public funds to target Title 38 beneficiaries without improving either the quality of education or graduation outcomes for those recipients.

Regrettably, there is a history of abuse by some Title 38 school and program recipients, including the documented waste of large amounts of public monies, and more importantly, the taking of monies and years from the intended beneficiaries -- without adequate benefit. These disappointing outcomes have been documented in audits, Congressional reports and numerous other sources. More specifically, the rationale for rules to prevent historical and predicted abuse is driven by numerous factors, including the following:

1. The higher maximums for tuition assistance and for living expenses for veterans under Title 38 *vis-à-vis* public assistance to other populations; a justifiable disparity, but one that creates an incentive for marketing abuse;
2. The irreparable harm that can flow from years of education without beneficial outcome, including the common private borrowing by students, which can create hardship where expected employment does not occur, including credit ruination and other consequences;
3. Limitations on effective court redress or other state protections to address abuses of veterans in their use of Title 38 benefits.
4. Congressional intent that veterans receive reliable assistance to achieve self-sufficiency and success.

These and other factors commend a preventive strategy that is based on bright-line criteria that closely correlate with abuse prevention or education success – including the empirical record of graduation, job qualification, subsequent employment, debt management, and other measurable

performance factors. The rules also ensure that student veterans have an effective legal remedy against a postsecondary institution or program's fraudulent or predatory practices to provide redress where prevention fails. A set of these rules apply only to institutions with a predominant share of revenue from Title 38 public sources – with the concomitant expectation of statutory and rule compliance. As a part of the privileged receipt of those funds and that trust, the institutions may not categorically forbid effective judicial redress by the student veterans involved.

The specific problem being addressed in this regulatory action is to, without being unduly burdensome, build upon the recent performance standards for the broader state higher education Cal Grant subsidy, and establish baseline accreditation, graduation, and academic spending requirements appropriate for this distinct population.

B. Informative Digest

The specific purpose for each proposed amendment or adoption of 12 CCR 443-447 would provide as follows:

Section 443 defines terms used in the regulations. This is necessary for the reader to be able to easily understand the meaning of the defined term or phrase as used in the regulations.

Section 444 requires institutions be accredited in accordance with California EC 67102 or be issued a waiver by the USDVA under 38 USC 3676 section(f)(1). This is necessary to ensure the California institutions comply with all federal and state laws and regulations regarding accreditation and the authority to operate as a California Private Postsecondary Institution.

Section 445(a)(1) requires institutions to comply with EC 67100. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(a)(2) requires institutions to comply with any standard, policy, rule, law, or requirement used in consideration for a grant of program approval by CSAAVE under EC 67100 (c). This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(a)(3) requires qualifying institutions and programs provide information on their graduates' license examination passage rates, graduation completion rates, and the cohort default rate current or most recent year preceding the application submitted to CSAAVE for approval consideration and certify this requirement to CSAAVE. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(a)(4) requires qualifying institutions and programs to demonstrate financial stability. This is necessary to ensure that the qualifying institutions and programs can assure their students they can complete their education.

Section 445(a)(5) requires all qualifying postsecondary institutions and programs to comply with state and federal provisions on advertising, representations, claims, and marketing. All advertising showed to veterans must be truthful and comply with the Unfair Competition Law and the Consumer Legal Remedies Act. This section is necessary to ensure these institutions' advertising and representations made to veterans and other individuals eligible for Title 38 are neither fraudulent nor deceitful.

Section 445(a)(6) requires institutions and programs to comply with state and federal disclosure standards and requirements. All advertising showed to veterans must be truthful and comply with the Unfair Competition Law and the Consumer Legal Remedies Act. This section is necessary to ensure these institutions' advertising and representations made to veterans and other individuals eligible for Title 38 are neither fraudulent nor deceitful. This is necessary to ensure the institutions and programs comply with state federal requirements and standards applying to Title 38 eligibility, and to prevent an institution from misrepresenting that it has such approval from the Department of Education or CSAAVE.

Section 445(a)(7) requires the institution or program to provide URL links to the CSAAVE websites. This is necessary to help prospective students make informed decisions about their academic future and to inform students of the approval status of the institution and its program(s).

Section 445(b)(1) requires institutions to comply with EC 67100. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(b)(2) requires institutions to satisfy requirements necessary to allow a student who completes the educational program to qualify to take any required licensing or certification exam. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility, and to assure student success.

Section 445(c) requires qualifying institutions and programs to conduct an "employment market assessment" at program creation and submit the assessment to CSAAVE. This is necessary to substantiate student outcomes following graduation and demonstrate that the institution or program is responding to job market conditions and substantiate advertising claims.

Section 445(d) authorizes CSAAVE to utilize the institution's or program's compliance with any standards, rules, and/or requirements prescribed by any state or federal licensing or approving agency or entity, and any accrediting body, agency, or association, as a basis for a grant of CSAAVE approval. This is necessary to ensure that CSAAVE does not grant approval for non-compliant institutions and programs and prevent veterans and other eligible persons from enrolling and losing Title 38 education benefits.

Section 446 requires institutions to provide CSAAVE copies of all documents and other materials concerning the institution and its programs for which approval is sought, including all documents maintained by the governmental, accrediting, or licensing agency or entity. This is to ensure CSAAVE has knowledge of the licensing and/or approval status of an institution or its approved programs offered in California.

Section 447 authorizes CSAAVE to suspend the approval of a course for new enrollment, or suspend approval of a licensing or certification test, pursuant to 38 Code of Federal Regulations (CFR) section 21.4259(a)(1). It also provides the authority to immediately disapprove a course, licensing or certification test, pursuant to 38 CFR Section 21.4259(a)(2) and 38 USC section 3679.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

After conducting an evaluation for any regulations related to this area, Cal Vet has found that there are no inconsistent or incompatible existing state regulations. Cal Vet (through the

CSAAVE administrator) is the only state agency that regulates the awarding of Title 38 funds to postsecondary educational institutions and programs seeking to enroll veterans or eligible persons for such awards.

DISCLOSURES REGARDING THE PROPOSED ACTION

CalVet has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: Minimal.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or businesses: CalVet is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, Statewide Adverse Economic Impact on Business: The proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

In accordance with Government Code section 11346.5(a)(10), the results of the EIA (full EIA found in the Initial Statement of Reasons) are as follows:

- The proposed regulations will not create or eliminate jobs in California.
- The proposed regulations will not create or eliminate businesses in California.
- The proposed regulations will not affect the expansion of existing businesses in California.

Benefits of the Proposed Action:

The proposed regulations will add protections for California veterans not currently in place. Applying the standards currently in place for the Cal Grant subsidy ensure a consistent application of state requirements for higher education institutions, while protecting veterans and ensuring they will receive the educational benefits they expect and should acquire when enrolled in a state-approved Title 38 program.

SMALL BUSINESS DETERMINATION:

The proposed regulations will not affect small business because this proposed regulation only impacts educational institutions who seek Title 38 funding.

BUSINESS REPORT:

The proposed regulation does not require a business report.

CONSIDERATION OF ALTERNATIVES

Cal Vet must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Phil McAllister, Regulatory Actions Coordinator
California Department of Veterans Affairs
1227 O Street, Suite 300
Sacramento, California 95814
Telephone: (916) 653-1961
Fax: (916) 653-2456
Email: phil.mcallister@calvet.ca.gov

The backup contact person for these inquiries is:

Latanaya Johnson
Education Administrator
California State Approving Agency for Veterans Education
1227 O Street
Sacramento, CA 95814
Telephone: (916) 503-8319
Fax: (916) 653-1035
Email: latanaya.johnson@calvet.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Phil McAllister at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CalVet will make the entire rulemaking file available for inspection and copying throughout the

rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Phil McAllister at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, CalVet may adopt the proposed regulations substantially as described in this notice. If CalVet makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before CalVet adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Phil McAllister at the address indicated above. CalVet will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Phil McAllister at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <https://www.calvet.ca.gov/about-us/laws-regulations>.

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